

Honorable Brian A. Tsuchida

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PREMERA BLUE CROSS, a Washington non-
profit corporation,

Plaintiff,

v.

MARY WINZ; TRACIE LESAN; JOYCE
ARLENE NELSON (FORMERLY KNOWN
AS JOYCE ARLENE LESAN),

Defendants.

No. C17-695-BAT

MODEL STIPULATED
PROTECTIVE ORDER

NOTED ON MOTION CALENDAR:
JUNE 29, 2017

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: Beneficiary designations and financial information related
4 to pension and 401(k) plans.

5 3. SCOPE

6 The protections conferred by this agreement cover not only confidential material (as
7 defined above), but also (1) any information copied or extracted from confidential material;
8 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
9 testimony, conversations, or presentations by parties or their counsel that might reveal
10 confidential material. However, the protections conferred by this agreement do not cover
11 information that is in the public domain or becomes part of the public domain through trial or
12 otherwise.

13 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

14 4.1 Basic Principles. A receiving party may use confidential material that is
15 disclosed or produced by another party or by a non-party in connection with this case or the
16 Related Cases, as defined herein, only for prosecuting, defending, or attempting to settle this
17 litigation or a Related Case. The “Related Cases” are *In re Estate of Gerald Lesan*, Case No.
18 17-4-00015-5 (Jefferson County Superior Court) (the “Probate Case”), and *Joyce Lesan v.*
19 *Gerald Lesan*, Case No. 15-3-00665-9, filed in Snohomish County Superior Court (the
20 “Divorce Case”). Confidential material may be disclosed only to the categories of persons
21 and under the conditions described in this agreement. Confidential material must be stored
22 and maintained by a receiving party at a location and in a secure manner that ensures that
23 access is limited to the persons authorized under this agreement.

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the designating party, a receiving party may
3 disclose any confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well as employees of
5 counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in house counsel) of the receiving
7 party to whom disclosure is reasonably necessary for this litigation, unless the parties agree
8 that a particular document or material produced is for Attorney’s Eyes Only and is so
9 designated;

10 (c) experts and consultants to whom disclosure is reasonably necessary for this
11 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
12 A);

13 (d) the court, court personnel, and court reporters and their staff;

14 (e) copy or imaging services retained by counsel to assist in the duplication of
15 confidential material, provided that counsel for the party retaining the copy or imaging service
16 instructs the service not to disclose any confidential material to third parties and to
17 immediately return all originals and copies of any confidential material;

18 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
19 necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages
21 of transcribed deposition testimony or exhibits to depositions that reveal confidential material
22 must be separately bound by the court reporter and may not be disclosed to anyone except as
23 permitted under this agreement;

24 (g) the author or recipient of a document containing the information or a custodian or
25 other person who otherwise possessed or knew the information.

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1 4.3 Filing Confidential Material. Before filing confidential material or discussing
2 or referencing such material in court filings, the filing party shall confer with the designating
3 party to determine whether the designating party will remove the confidential designation,
4 whether the document can be redacted, or whether a motion to seal or stipulation and
5 proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be
6 followed and the standards that will be applied when a party seeks permission from the court
7 to file material under seal. In the Related Cases, the parties shall follow the relevant court's
8 procedures that must be followed and the standards that will be applied when a party seeks
9 permission from that court to file material under seal.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
12 party or non-party that designates information or items for protection under this agreement
13 must take care to limit any such designation to specific material that qualifies under the
14 appropriate standards. The designating party must designate for protection only those parts of
15 material, documents, items, or oral or written communications that qualify, so that other
16 portions of the material, documents, items, or communications for which protection is not
17 warranted are not swept unjustifiably within the ambit of this agreement.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
19 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
20 unnecessarily encumber or delay the case development process or to impose unnecessary
21 expenses and burdens on other parties) expose the designating party to sanctions.

22 If it comes to a designating party's attention that information or items that it
23 designated for protection do not qualify for protection, the designating party must promptly
24 notify all other parties that it is withdrawing the mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this
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1 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
2 ordered, disclosure or discovery material that qualifies for protection under this agreement
3 must be clearly so designated before or when the material is disclosed or produced.

4 (a) Information in documentary form: (e.g., paper or electronic documents and
5 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that
7 contains confidential material. If only a portion or portions of the material on a page qualifies
8 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
9 making appropriate markings in the margins).

10 (b) Testimony given in deposition or in other pretrial proceedings: the parties and
11 any participating non-parties must identify on the record, during the deposition, or other
12 pretrial proceeding, all protected testimony, without prejudice to their right to so designate
13 other testimony after reviewing the transcript. Any party or non-party may, within fifteen days
14 after receiving the transcript of the deposition or other pretrial proceeding, designate portions
15 of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
16 confidential information at trial, the issue should be addressed during the pre-trial conference.

17 (c) Other tangible items: the producing party must affix in a prominent place on
18 the exterior of the container or containers in which the information or item is stored the word
19 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
20 protection, the producing party, to the extent practicable, shall identify the protected
21 portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
23 designate qualified information or items does not, standing alone, waive the designating
24 party’s right to secure protection under this agreement for such material. Upon timely
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1 correction of a designation, the receiving party must make reasonable efforts to ensure that the
2 material is treated in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
11 regarding confidential designations without court involvement. Any motion regarding
12 confidential designations or for a protective order must include a certification, in the motion
13 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
14 conference with other affected parties in an effort to resolve the dispute without court action.
15 The certification must list the date, manner, and participants to the conference. A good faith
16 effort to confer requires a face-to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
18 intervention, the designating party may file and serve a motion to retain confidentiality under
19 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
20 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
21 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
22 burdens on other parties) may expose the challenging party to sanctions. All parties shall
23 continue to maintain the material in question as confidential until the court rules on the
24 challenge.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that party must:

6 (a) promptly notify the designating party in writing and include a copy of
7 the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order
9 to issue in the other litigation that some or all of the material covered by the subpoena or
10 order is subject to this agreement. Such notification shall include a copy of this agreement;
11 and

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the designating party whose confidential material may be affected.

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 confidential material to any person or in any circumstance not authorized under this
17 agreement, the receiving party must immediately (a) notify in writing the designating party of
18 the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
19 protected material, (c) inform the person or persons to whom unauthorized disclosures were
20 made of all the terms of this agreement, and (d) request that such person or persons execute
21 the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

22 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
23 PROTECTED MATERIAL

24 When a producing party gives notice to receiving parties that certain inadvertently
25 produced material is subject to a claim of privilege or other protection, the obligations of the
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1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
2 provision is not intended to modify whatever procedure may be established in an e-discovery
3 order or agreement that provides for production without prior privilege review. The parties
4 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

5 10. NON TERMINATION AND RETURN OF DOCUMENTS

6 Within 60 days after the termination of this action, including all appeals, and all
7 Related Cases, each receiving party must return all confidential material to the producing
8 party, including all copies, extracts and summaries thereof. Alternatively, the parties may
9 agree upon appropriate methods of destruction.

10 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
11 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
12 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
13 work product, even if such materials contain confidential material.

14 The confidentiality obligations imposed by this agreement shall remain in effect until
15 a designating party agrees otherwise in writing or a court orders otherwise.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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8 Attorneys for Defendant Joyce Nelson

9 PURSUANT TO STIPULATION, IT IS SO ORDERED

10 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any

11 documents in this proceeding shall not, for the purposes of this proceeding or any other

12 proceeding in any other court, constitute a waiver by the producing party of any privilege

13 applicable to those documents, including the attorney-client privilege, attorney work-product

14 protection, or any other privilege or protection recognized by law.

15 DATED: July 5, 2017

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17 _____
18 BRIAN A. TSUCHIDA
19 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty
6 of perjury that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Western District of Washington on [date]
8 in the case of ***Premera Blue Cross v. Mary Winz et al.***, Case No. **C17-695-BAT**. I agree to
9 comply with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
12 any information or item that is subject to this Stipulated Protective Order to any person or entity
13 except in strict compliance with the provisions of this Order. I further agree to submit to the
14 jurisdiction of the United States District Court for the Western District of Washington for the
15 purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement
16 proceedings occur after termination of this action.
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19 Date: _____

20 City and State where sworn and signed: _____

21 Printed name: _____

22 Signature: _____
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